IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 17864 of 2002

Between:

T.Kesava Rao S/o.late Sri.Umamaheswara Rao, Retired Secretary, Zilla Grandhalaya Samstha, Vizianagaram Presently residing at

D.No.21-1-12, Salipet, Kakinada, East Godavari District.

..... PETITIONER

AND

1 Government of Andhra Pradesh Education (Libraries) Department, Rep.by its Secretary Secretariat, Hyderabad.
2 Director of Public Libraries Andhra Pradesh, Hyderabad.
3 Audit Officer, Local Fund Accounts, Vizianagaram.
4 P.Srimannarayana Rao Regional Joint Director (School Education) Kakinada/ Enquiry Officer, Presently working as Secretary to Board of Governors-cum-Administrative Officer, Hyderabad Public Schools, Begumpet & Ramanthapur, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or orders more particularly in the nature of Writ of Certiorari calling the records of the Hon'ble A.P.Administrative Tribunal, Hyderabad pertaining to OA.No.6101/99 and CA.No.176/2000 in OA.No.6101/99 i) quashing the orders Dt.15/05/2002 in OA.No.6101/99 with VMA No.372/2000, MA.No.2638/2001 and CA.No.176/2000 as the same are without jurisdiction, contrary to law, weight of evidence and probabilities of the case, arbitrary, unjust, without application of mind, violative of the cardinal principles of natural justice besides hitting Articles 14 & 21

of the Constitution of India. ii) declaring the inaction on the part of the 1st and 2nd respondents i.e., Government of A.P.Education (Libraries) Department, Hyderabad, represented by its Secretary and Director of Public Libraries AP, Hyderabad respectively, in not releasing the Gratuity of Rs.76,106/- and commutation value of pension of Rs.1,25,394/- as illegal, arbitrary, unjust, inhuman and cruel besides being malafide as the petitioner retired from service on 31/12/1994 AN, a Senior Citizen and being deprived of his livelihood in the evening of his life besides awarding exemplary costs by way of compensation and awarding interest at bank rate at 18% for delayed payment of retiral benefits and those payments to be made under gratuity and commutation value of pension from the date of accrual till the date of actual payment.

Counsel for the Petitioner: MR.D.V.BHADRAM

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following:

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

–

_

_

ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (for short Tribunal) in O.A.No.6101 of 1999 and CA.No.176 of 2000, dated 15.5.2002.

2. The matter has a chequered career may be at the instance of the petitioner and also on account of dilatory attitude adopted by the Government in this case. It is necessary to narrate certain important events in this case so as to correctly appreciate the issue under adjudication.

3. The petitioner was working as Secretary in Zilla Grandhalaya Samstha, Eluru. He retired from service on 31.12.1994. However, before retirement a charge memo was issued to him vide proceedings Rc.No.145-A3/94, dated 28.12.1994 alleging certain irregularities. To that charge memo the petitioner submitted explanation on 1.1.1995. Thereafter an enquiry appears to have been conducted and ultimately a show cause notice under Rule 9(2)(a) of A.P. Revised Pension Rules was issued on 6.11.1996, to which the petitioner submitted a detailed explanation. Thereafter the Government, after considering the enquiry report and also explanation submitted by the petitioner, passed an order in Memo No.1566/Lib.2/95-25, dated 16.4.1999 to the effect that the Director of Public Libraries shall assess the loss caused. In respect of charge No.1 though the loss was assessed approximately at Rs.20,000/-, it appears that the matter was not given finality. The petitioner having waited for a considerable time filed the above OA before the Tribunal seeking release of the DCRG and also commuted value of the pension. While the matter was pending in the Tribunal, the Government issued another show cause notice dated 17.7.1999 proposing to deduct a sum of Rs.1,15,481/- on account of the alleged loss in respect of charge No.1 and another sum of Rs.20,782/- under charge No.2 and also proposed a pensionary cut of 10%. Though the petitioner challenged the above show cause notice before the Tribunal in O.A.No.5205 of 2000, it was dismissed with a direction that he shall submit explanation. It is also the case of the petitioner that subsequently he filed a detailed explanation

and reminded the Government by telegrams also, but no final orders were passed till now. The Tribunal, after considering all these aspects, dismissed the OA.No.6019 of 1998. Aggrieved by the said order, the present Writ Petition has been filed.

4. The learned counsel for the petitioner submits that when the petitioner was retired from service with effect from 1.1.1995, his pension benefits should be released unless it is ordered to be withheld in the enquiry pending against the alleged acts committed by the petitioner. But in the instant case a charge memo was already issued to the petitioner as on the date of retirement on 28.12.1994, i.e., four days prior to the date of his retirement. Thereafter an enquiry was caused and the petitioner was also given an opportunity to submit explanation, which he did it by filing explanation on 6.12.1996. Thereafter the Government passed the following order on 16.4.1999 after considering the enquiry report and also after perusing the explanation submitted by the petitioner:

> "The Dir. of Public Libraries has submitted the report of the Enquiry submitted by Sri P.Suryanarayana Rao, Secretary to Board of Governors-cum-Administrator, Hyderabad Public School, Hyderabad and requested the Government to examine the report and issue appropriate orders in the matter.
>
> After careful examination of the Enquiry report, Government consider that charges 1 to 3 are held established and on charge-1 the loss of Rs.20,000/- said to have been sustained by the Zilla Grandhalaya Samstha, West Godavari district by way of interest, be recovered from him, and directed to Dir. of Public Libraries to assess correctly and recover accordingly.
>
> The Dir. of Public Libraries is requested to take further action to process immediately the Pension papers and intimate the action to A.P. Lok Ayuktha and to the Governmnent".

It is the grievance of the petitioner that he is not liable to pay Rs.20,000/-, and that though he is liable to pay only Rs.17,250/-, but he has no objection if Rs.20,000/- is deducted from his pensionary dues. However, for the reasons best known to the Government a second show cause notice was issued to the petitioner on 17.7.2000, to which the petitioner submitted his explanation stating that the show cause notice is wholly without jurisdiction and when the matter is pending before the Tribunal, it is always open for him to raise such a

contention. Under those circumstances, the learned counsel for the petitioner would submit that the order of the Tribunal is liable to be set aside and the authorities should release the DCRG amount and also the commuted value of the pension with interest.

5. On the other hand the learned Government Pleader for Services-I submits that since a show cause notice was already issued on 17.7.2000 revising the recovery proceedings and the petitioner has not submitted his explanation, he may be directed to submit his explanation so as to enable the Government to pass appropriate orders in this regard.

6. We are afraid we cannot accept the contentions of the learned Government Pleader. Much water has flown from the date of retirement of the petitioner and if some more time is granted to the Government, it is doubtful whether the petitioner will get the amount at all. Therefore, we are inclined to dispose of the matter on merits.

7. The issue falls for consideration lies in a very narrow compass. The petitioner was retired from service from 1.1.1995 and by that time a charge memo was pending and ultimately punishment was imposed on him and Rs.20,000/- was directed to be recovered in respect of charge No.1 from his pension arrears. Admittedly in this case after retirement of the petitioner, an enquiry was conducted and he was also given an opportunity to file the explanation, which he did it. Ultimately the Government passed the order referred to above. However, the learned counsel for the petitioner now submits that when the Government was inclined to recover a sum of Rs.20,000/- even though he is liable to pay Rs.17,250/-, he has no objection for recovery of Rs.20,000/- from his pension drawn.

8. We find that the petitioner was granted a sum of Rs.2,999/- towards pension from 1.1.1995 and after commutation, his pension was reduced to Rs.2,000/- from 1.1.1995 and the commuted value of the pension was assessed at Rs.1,25,394/-, besides that the petitioner was also eligible for DCRG amounting to Rs.76,106/-. Under these circumstances the issue that calls for consideration is whether the petitioner should be again further subjected to inconvenience in respect of the commuted value of the pension and DCRG.

9. We find that once the Government having exercised the power by issuing a

Memo dated 16.4.1999, it cannot again issue another show cause notice on 17.7.2000. It is also not the case of the Government that after communication dated 16.4.1999, a further enquiry was conducted and thereafter it was held that the petitioner was found responsible for further amounts. In such a situation it is wholly inappropriate on the part of the Government to issue second show cause notice, if any. When a detailed explanation was already submitted to the first show cause notice, issuing of second show cause notice is beyond the power of the Government. Therefore, we need not consider merits of the second show cause notice dated 17.7.2000 even though explanation appears to have been submitted by the petitioner to the show cause notice dated 17.7.2000. Therefore, we are of the considered view that the Government has to act only on the basis of the communication dated 16.4.1999, in which it has been clearly stated that a sum of Rs.20,000/- has to be recovered from the petitioner subject to actual assessment. However, the learned Government Pleader tried to interpret the said Memo stating that though under charge No.1, the loss of Rs.20,000/- was said to have been sustained by the Zilla Grandhalaya Samstha, by way of interest, be recovered from the petitioner, discretion was given to the Director of Public Libraries directing to assess the amount of loss correctly. We are afraid we cannot accept the contention of the learned Government Pleader as the interpretation goes contrary to the intention of the Memo dated 16.4.1999.

Under those circumstances and in view of the fact that the matter is pending nearly for a decade without actual payment of commuted value of the pension and DCRG., we dispose of the Writ Petition with the following directions:

a. The respondents shall withhold a sum of Rs.20,000/- (Rupees twenty thousand only) from out of the pensionary benefits payable to the petitioner in pursuance of the memo issued by the Government dated 16.4.1999.

b. The respondents shall release the balance commuted value of the pension after deducting Rs.20,000/- from Rs.1,25,394/- and also release a further sum of Rs.76,106/- towards DCRG.

c. The above amounts shall carry interest at the rate of 9% from 1.1.1995 till date of payment.

This exercise shall be done within a period of two (02) months from the date of receipt of a copy of this order. No costs.

(G.BIKSHAPATHY, J.)

6th December, 2004.

(P.S.NARAYANA, J.)

SSR

To

1 Secretary, Government of Andhra Pradesh Education (Libraries) Department, Secretariat, Hyderabad.
2 Director of Public Libraries Andhra Pradesh, Hyderabad.
3 Audit Officer, Local Fund Accounts, Vizianagaram.
4 P.Srimannarayan Rao Regional Joint Director (School Education) Kakinada/ Enquiry Officer, Presently working as Secretary to Board of Governors-cum-Administrative Officer, Hyderabad Public Schools, Begumpet & Ramanthapur, Hyderabad.

5 2CCs to the G.P. for Services-I, High Court of A.P. Hyderabad. (OUT).

6 2CD copies.

7. The Presiding Officer, A.P. Administrative Tribunal, Hyderabad.